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9.13.19  
2 11am

FILED WITH LRC TIME: 11am
SEP 13 2019 Emily B. Caudill REGULATIONS COMPILER

1 FINANCE AND ADMINISTRATION CABINET

2 Department of Revenue

3 (Amendment)

4 103 KAR 26:110. Motor carrier repair and replacement parts.

5 RELATES TO: KRS 131.110, 139.010, 139.200, 139.260, 139.270, 139.310, 139.330,  
6 139.480, 139.540, 139.550, 139.590, 139.720

7 STATUTORY AUTHORITY: KRS 131.130, 139.710

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130 and 139.710 authorize the  
9 Department of Revenue to promulgate administrative regulations for the assessment, collection,  
10 refunding, administration, and enforcement of the Kentucky tax laws. This administrative  
11 regulation establishes requirements and guidelines for the application of the sales and use tax  
12 exemption for repair and replacement parts for the direct operation or maintenance of a motor  
13 vehicle, including any towed unit, used exclusively in interstate commerce for the conveyance of  
14 property or passengers for hire as provided in KRS 139.480(31).[(32).]

15 Section 1. Definitions. (1) "Exclusively in interstate commerce" means the conveyance of  
16 property or passengers by a motor vehicle in more than one (1) state. A motor vehicle used in the  
17 conveyance of property or passengers only within the borders of this state is not used in interstate  
18 commerce.

19 (2) "For hire" means a motor carrier receiving compensation for transportation of property  
20 owned by others or passengers under the requirements of the Federal Motor Carrier Safety  
21 Administration (FMCSA) 49 C.F.R. 325 to 399.



(3) "Truck Part Direct Pay Authorization" or "TP DPA" means an authorization issued by the Department of Revenue that permits a taxpayer to report Kentucky sales and use tax directly to the department on applicable repair, replacement parts, and labor or services rendered in installing or applying applicable repair and replacement parts.~~[and replacement parts.]~~

Section 2. Application Process. (1) The applicant shall complete the Application for Truck Part Direct Pay Authorization, Revenue Form 51A160.

(2) To qualify for the TP DPA, the applicant shall be:

(a) Designated as an interstate motor carrier with the Federal Motor Carrier Safety Administration and the Kentucky Transportation Cabinet;

(b) Registered with a Kentucky sales and use tax account number or a Kentucky consumer use tax account number; and

(c) Operating one (1) or more motor vehicles exclusively in interstate commerce.

(3) The department shall issue qualifying applicants a TP DPA (Revenue Form 51A161).

Section 3. Exemption Procedures. The TP DPA holder shall:

(1) Issue a copy of the authorization to all its truck part vendors;

(2) Report and remit the sales or use tax to the Department of Revenue on purchases of repair, replacement parts, and labor or services rendered in installing or applying applicable repair and replacement parts~~[and replacement parts]~~ used on nonqualifying motor vehicles that the purchaser's vendor would have remitted if the authorization had not been issued;

(3) Report and pay all taxable purchases in accordance with KRS 139.540, 139.550, and 139.590;

(4) Maintain records pursuant to KRS 139.720(2); and

(5) File by February 15 of each year the "Truck Part Direct Pay Authorization Purchase Report," Revenue Form 51A162, to report the total tax savings from purchases of repair, replacement parts, and labor or services rendered in installing or applying applicable repair and replacement parts~~[and replacement parts]~~ that are exempt from sales and use tax pursuant to KRS 139.480~~(31)~~.~~[(32)]~~

Section 4. Vendor Requirements. (1) Vendors shall be relieved of the duty to collect and pay the sales or use tax on sales of repair, replacement parts, and labor or services rendered in installing or applying applicable repair and replacement parts~~[and replacement parts]~~ if they:

(a) Accept a copy of the purchaser's TP DPA pursuant to KRS 139.270; and

(b) Retain the copy in the company records pursuant to KRS 139.720(2).

(2) Vendors shall:

(a) Report sales to a TP DPA holder on Line 1, Gross Receipts, of Revenue Form 51A102, "Sales and Use Tax Return"; and

(b) Take a corresponding deduction Code 190 on the return and identify the deduction as "TP DPA Sales".

Section 5. Transfer of Authorization. (1) A TP DPA shall not be transferable upon the sale, lease, or other transfer of the business.

(2) A TP DPA holder shall notify the department within ten (10) days of the effective date of the sale, lease, or other transfer of the business.

Section 6. Termination. (1) The department shall terminate a TP DPA if the holder:

(a) Fails or ceases to be an eligible taxpayer;

(b) Fails to timely file its sales and use tax returns and timely pay any tax due; or

(c) Fails to comply with any of the provisions of this administrative regulation.

(2) The department shall notify a TP DPA holder of the termination by certified mail at the last known business address.

(3) Upon receipt of the notification of termination, a TP DPA holder shall notify all truck repair and replacement part vendors within thirty (30) days of the date of termination.

(4) The effective date of the termination shall be the date of the mailing of the termination notice.

~~Section 7. [Protests. The denial or termination of a TP DPA may be protested pursuant to KRS 131.110.~~

~~Section 8.]~~ Forms. The forms listed herein may be inspected, copied, or obtained, subject to applicable copyright law, at:

(1) The Kentucky Department of Revenue, 501 High Street, Frankfort, Kentucky 40620;

(2) A Kentucky Taxpayer Service Center, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(3) The department website~~[Web site]~~ at <http://revenue.ky.gov>.

103 KAR 26:110

APPROVED BY AGENCY:

*Daniel P. Bork*

DANIEL P. BORK, COMMISSIONER

Department of Revenue

Finance and Administration Cabinet

*Sept 12, 2019*

Date

## **PUBLIC HEARING AND PUBLIC COMMENT PERIOD**

A public hearing on this administrative regulation shall be held on November 21, 2019 at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky, 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), [Lisa.Swiger@ky.gov](mailto:Lisa.Swiger@ky.gov)(email).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation No. 103 KAR 26:110

Contact Person: Lisa Swiger

Phone Number: (502) 564-9526

Email: Lisa.Swiger@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes requirements and guidelines for the application of sales and use tax exemption for repair and replacement parts for the direct operation or maintenance of a motor vehicle, including any towed unit, used exclusively in interstate commerce for the conveyance of property or passengers for hire.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to providing up to date guidance on the tax treatment of transactions made by and with motor carriers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The proposed updates amend regulatory language to conform with KRS 131.130, 131.131, and 139.010.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The changes made in this amendment will provide the most current and up to date guidance to taxpayers impacted by the provisions of this regulation.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: The proposed amendment will change the existing administrative regulation by updating statutory references, updating taxable labor provisions, and deleting protest language related to the Direct Pay Authorization that is obsolete.

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of related statutes by providing the most current and up to date guidance to taxpayers impacted by the provisions of this regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Motor carriers and their vendors.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Motor carriers who hold TP DPA's will now need to report and remit sales tax on their purchase of service and installation labor on repair and replacement parts (in addition to the parts themselves) used on non-qualifying motor vehicles pursuant to KRS 139.010(15).

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): While there is no additional specific cost to comply with the amended regulation, service and installation labor on repair and replacement parts (in addition to the parts themselves) used on non-qualifying motor vehicles is now subject to sales tax pursuant to KRS 139.010(15).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities detailed in Question 3 will be knowledgeable as to what transactions are subject to sales tax involving motor carriers, and as such, remain in good standing with the Department of Revenue

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

(b) On a continuing basis: There is no cost expected on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding or increase in fees is needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? (Explain why or why not): Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted by it.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 103 KAR 26:110

Contact Person: Lisa Swiger

Phone Number: (502) 564-9526

Email: Lisa.Swiger@ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? There is no estimated impact on expenditures and revenues for state and local governments.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? There is no estimated impact on expenditures and revenues for state and local governments.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect. Any costs associated with this new requirement should be absorbed into the current department maintenance contracts and operating budget.

(d) How much will it cost to administer this program for subsequent years? No additional costs should be incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): No impact.

Expenditures (+/-): No impact.

Other Explanation:

